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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,137	09/26/2003	Robert A. Kruger	OP100.1	6106

7590 07/05/2006
Jerrold J. Litzinger
2134 Madison Road
Cincinnati, OH 45208

EXAMINER

RAMIREZ, JOHN FERNANDO

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

6

Office Action Summary	Application No.	Applicant(s)	
	10/672,137	KRUGER, ROBERT A.	
	Examiner	Art Unit	
	John F. Ramirez	3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Nelson et al. (US 6,216,540).

Nelson et al. teaches a method of acoustic imaging of structures of tissue (see abstract), including immersing the tissue in an acoustic coupling media (col. 14, line 21- col. 15, line 28) for acoustically coupling the tissue to an acoustic sensor array (col. 6, lines 42-65), delivering to the tissue a fluorescent dye responsive to electromagnetic radiation (col. 26, line 61 – col. 27, line 45), irradiating the tissue with a source of electromagnetic radiation at a first frequency to stimulate fluorescence of the dye and a thermoacoustic response thereto (see abstract), detecting the thermoacoustic response and producing therefrom a dye-enhanced image of structures of the tissue (col. 12, line 31- col. 13, line 15), stimulating the tissue with acoustic excitation and detecting an acoustic echo thereof and producing therefrom an ultrasonic image of structures of the tissue are considered (col. 23, lines 22-43).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson et al. in view of Schmidt et al. (US 4,407,008).

The Nelson et al. patent teaches all the limitations of the claimed subject matter except for mentioning specifically the steps of irradiating the tissue with a source of electromagnetic radiation at a second frequency stimulating substantially less fluorescence than the first frequency, and detecting a thermoacoustic response to the second frequency stimulation and producing therefrom an unenhanced image of structures of the tissue, combining the dye-enhanced and unenhanced images of structures of the tissue, forming a difference between the images.

However, the steps of irradiating the tissue with a source of electromagnetic radiation at a second frequency stimulating substantially less fluorescence than the first frequency, and detecting a thermoacoustic response (see claim 10) to the second frequency stimulation and producing therefrom an unenhanced image of structures of the tissue (col. 3, lines 19-60), combining the dye-enhanced and unenhanced images of structures of the tissue (col. 4, lines 37-55), forming a difference between the images are conventional in the art as evidenced by the teachings of Schmidt et al.

Based on the above observations, for a person of ordinary skill in the art, modifying the method disclosed by Nelson et al. with the above discussed enhancements would have been considered obvious because such modifications would have provided a method to analyze and identify specimen specific parameters with high sensitivity and resolution with a device of the simplest construction.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John F. Ramirez whose telephone number is (571) 272-8685. The examiner can normally be reached on (Mon-Fri) 7:30 - 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (571) 272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JFR
6/21/06


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TECHNOLOGY CENTER 3700